

CV 15

3479

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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MALIBU MEDIA, LLC,

Plaintiff,

vs.

JOHN DOE subscriber assigned IP address
67.81.242.83,

Defendant.
-----X

Civil Action No. _____

**COMPLAINT – ACTION FOR
DAMAGES FOR PROPERTY
RIGHTS INFRINGEMENT**

FEUERSTEIN, J.

LINDSAY, M.J.

Plaintiff, Malibu Media, LLC, sues Defendant John Doe subscriber assigned IP address 67.81.242.83, and alleges:

Introduction

1. This matter arises under the United States Copyright Act of 1976, as amended, 17 U.S.C. §§ 101 et seq. (the “Copyright Act”).

2. Defendant is a persistent online infringer of Plaintiff’s copyrights. Indeed, Defendant’s IP address as set forth on Exhibit A was used to illegally distribute each of the copyrighted movies set forth on Exhibit B.

3. Plaintiff is the registered owner of the copyrights set forth on Exhibit B (the “Copyrights-in-Suit”).

Jurisdiction And Venue

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question); and 28 U.S.C. § 1338 (patents, copyrights, trademarks and unfair competition).

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U.S. DISTRICT COURT E.D.N.Y.
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5. Plaintiff used proven IP address geolocation technology which has consistently worked in similar cases to ensure that the Defendant's acts of copyright infringement occurred using an Internet Protocol address ("IP address") traced to a physical address located within this District, and therefore this Court has personal jurisdiction over the Defendant because (i) Defendant committed the tortious conduct alleged in this Complaint in this State, and (ii) Defendant resides in this State and/or (iii) Defendant has engaged in substantial and not isolated business activity in this State.

6. Based upon experience filing over 1,000 cases the geolocation technology used by Plaintiff has proven to be accurate to the District level in over 99% of the cases.

7. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c), because: (i) a substantial part of the events or omissions giving rise to the claims occurred in this District; and, (ii) the Defendant resides (and therefore can be found) in this District and resides in this State; additionally, venue is proper in this District pursuant 28 U.S.C. § 1400(a) (venue for copyright cases) because Defendant or Defendant's agent resides or may be found in this District.

Parties

8. Plaintiff, Malibu Media, LLC, (d/b/a "X-Art.com") is a limited liability company organized and existing under the laws of the State of California and has its principal place of business located at 409 W. Olympic Blvd., Suite 501, Los Angeles, CA, 90015.

9. Plaintiff only knows Defendant by his, her or its IP Address. Defendant's IP address is set forth on Exhibit A.

10. Defendant's Internet Service Provider can identify the Defendant.

Factual Background

I. Defendant Used the BitTorrent File Distribution Network To Infringe Plaintiff's Copyrights

11. The BitTorrent file distribution network (“BitTorrent”) is one of the most common peer-to-peer file sharing systems used for distributing large amounts of data, including, but not limited to, digital movie files.

12. BitTorrent’s popularity stems from the ability of users to directly interact with each other in order to distribute a large file without creating a heavy load on any individual source computer and/or network. The methodology of BitTorrent allows users to interact directly with each other, thus avoiding the need for intermediary host websites which are subject to DMCA take down notices and potential regulatory enforcement actions.

13. In order to distribute a large file, the BitTorrent protocol breaks a file into many small pieces called bits. Users then exchange these small bits among each other instead of attempting to distribute a much larger digital file.

14. After the infringer receives all of the bits of a digital media file, the infringer’s BitTorrent client software reassembles the bits so that the file may be opened and utilized.

15. Each bit of a BitTorrent file is assigned a unique cryptographic hash value.

16. The cryptographic hash value of the bit (“bit hash”) acts as that bit’s unique digital fingerprint. Every digital file has one single possible cryptographic hash value correlating to it. The BitTorrent protocol utilizes cryptographic hash values to ensure each bit is properly routed amongst BitTorrent users as they engage in file sharing.

17. The entirety of the digital media file also has a unique cryptographic hash value (“file hash”), which acts as a digital fingerprint identifying the digital media file (e.g. a movie). Once infringers complete downloading all bits which comprise a digital media file, the

BitTorrent software uses the file hash to determine that the file is complete and accurate.

18. Plaintiff's investigator, IPP International UG, established a direct TCP/IP connection with the Defendant's IP address as set forth on Exhibit A.

19. IPP International UG downloaded from Defendant one or more bits of each of the digital movie files identified by the file hashes on Exhibit A.

20. Defendant downloaded, copied, and distributed a complete copy of Plaintiff's movies without authorization as enumerated on Exhibit A.

21. Each of the cryptographic file hashes as set forth on Exhibit A correlates to a copyrighted movie owned by Plaintiff as identified on Exhibit B.

22. IPP International UG downloaded from Defendant one or more bits of each file hash listed on Exhibit A. IPP International UG further downloaded a full copy of each file hash from the BitTorrent file distribution network and confirmed through independent calculation that the file hash matched what is listed on Exhibit A. IPP International UG then verified that the digital media file correlating to each file hash listed on Exhibit A contained a copy of a movie which is identical (or alternatively, strikingly similar or substantially similar) to the movie associated with that file hash on Exhibit A. At no time did IPP International UG upload Plaintiff's copyrighted content to any other BitTorrent user.

23. IPP International UG connected, over a course of time, with Defendant's IP address for each hash value as listed on Exhibit A. The most recent TCP/IP connection between IPP and the Defendant's IP address for each file hash value listed on Exhibit A is included within the column labeled Hit Date UTC. UTC refers to Universal Time which is utilized for air traffic control as well as for computer forensic purposes.

24. An overview of the Copyrights-in-Suit, including each hit date, date of first

publication, registration date, and registration number issued by the United States Copyright Office is set forth on Exhibit B.

25. Plaintiff's evidence establishes that Defendant is a habitual and persistent BitTorrent user and copyright infringer.

Miscellaneous

26. All conditions precedent to bringing this action have occurred or been waived.

27. Plaintiff has retained counsel and is obligated to pay said counsel a reasonable fee for its services.

COUNT I
Direct Infringement Against Defendant

28. The allegations contained in paragraphs 1-27 are hereby re-alleged as if fully set forth herein.

29. Plaintiff is the owner of the Copyrights-in-Suit, as outlined in Exhibit B, each of which covers an original work of authorship.

30. By using BitTorrent, Defendant copied and distributed the constituent elements of each of the original works covered by the Copyrights-in-Suit.

31. Plaintiff did not authorize, permit or consent to Defendant's distribution of its works.

32. As a result of the foregoing, Defendant violated Plaintiff's exclusive right to:

(A) Reproduce the works in copies, in violation of 17 U.S.C. §§ 106(1) and 501;

(B) Redistribute copies of the works to the public by sale or other transfer of ownership, or by rental, lease or lending, in violation of 17 U.S.C. §§ 106(3) and 501;

(C) Perform the copyrighted works, in violation of 17 U.S.C. §§ 106(4) and 501, by showing the works' images in any sequence and/or by making the sounds accompanying the

works audible and transmitting said performance of the works, by means of a device or process, to members of the public capable of receiving the display (as set forth in 17 U.S.C. § 101's definitions of "perform" and "publically" perform); and

(D) Display the copyrighted works, in violation of 17 U.S.C. §§ 106(5) and 501, by showing individual images of the works nonsequentially and transmitting said display of the works by means of a device or process to members of the public capable of receiving the display (as set forth in 17 U.S.C. § 101's definition of "publically" display).

33. Defendant's infringements were committed "willfully" within the meaning of 17 U.S.C. § 504(c)(2).

WHEREFORE, Plaintiff respectfully requests that the Court:

(A) Permanently enjoin Defendant and all other persons who are in active concert or participation with Defendant from continuing to infringe Plaintiff's copyrighted works;

(B) Order that Defendant delete and permanently remove the digital media files relating to Plaintiff's works from each of the computers under Defendant's possession, custody or control;

(C) Order that Defendant delete and permanently remove the infringing copies of the works Defendant has on computers under Defendant's possession, custody or control;

(D) Award Plaintiff statutory damages per infringed work pursuant to 17 U.S.C. § 504 (a) and (c);

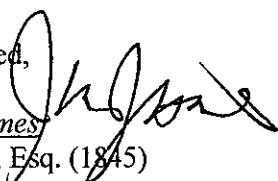
(E) Award Plaintiff its reasonable attorneys' fees and costs pursuant to 17 U.S.C. § 505; and

(F) Grant Plaintiff any other and further relief this Court deems just and proper.

DEMAND FOR A JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable.

Respectfully submitted,

By: /s/ Jacqueline M. James 
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Attorneys for Plaintiff

File Hashes for IP Address 67.81.242.83

ISP: Optimum Online High Speed Internet Service

Physical Location: Manhasset, NY

Hit Date UTC	File Hash	Title
04/29/2015 02:16:26	166BFDEBF03993F0B8AD4EF1B4F49A859052185E	Good Morning I Love You
03/30/2015 02:12:40	2F4771020A9701851F7D58DDEC8A77D916B55650	Exposed And Aroused
03/27/2015 02:45:31	CB58BA4C0DDD8C4D0AC4499B6518214046A38E6D	Sex and Submission
01/29/2015 03:21:43	7DCB496AA710C1311FAC92995881784C36921F85	The Studio Part #2
01/09/2015 03:53:55	EF2CE7C64AD0B9CCEFE52D9728E1D82D0349C4D	Spanish Heat
12/25/2014 03:38:17	CC476B3CF1ADB7F60CF4547064D849CE428D75A1	Enjoy the Ride
12/05/2014 03:58:30	7B3BD6CB04B4820C3BB3A3716B5B55F02FB89EBF	Cum In Get Wet
11/16/2014 03:37:18	722B5933BE86BB7F28E31F9F4FE0DBD465DE65A8	Serving Seduction
11/14/2014 03:24:29	A744D298543AB8D1E0EAE57ABA3754882B9CE8D4	Deep Down In Me
11/07/2014 04:55:38	FB19F226C1720F9C293C5E9CB07021829E151D92	One Show For Each
10/06/2014 02:18:00	0C485A86BB4EB968F1BDCD9D362FF25C98C72879	Fun For Three
10/06/2014 02:17:10	78C3190DCCA710786BCC4AB94D2499A285FE4F69	Nice And Slow
08/21/2014 02:15:51	63FC12CDDF5DBE0304B7EBD6AC3B0435D01B358C	For Your Eyes Only
08/21/2014 02:15:01	5612B6644244B6DA8CCB3EE46164EBE96C0220E0	Thunderstorm Love
07/16/2014 04:51:11	4F6D7C009DDC1DBE97EF793B9E87C7FAECE92C53	Tie Her Up For Me
07/01/2014 05:15:20	AC1FB83507AD965F693D2FB5D9945E1140B148F4	Give Me More Part 2
05/22/2014 05:26:14	9B2D98987560366CA5F58EC444BC76A49A868BA1	Meet My Lover From Austria

Total Statutory Claims Against Defendant: 17

EXHIBIT A

ENY50

Copyrights-In-Suit for IP Address 67.81.242.83

ISP: Optimum Online High Speed Internet Service

Location: Manhasset, NY

Title	Registration Number	Date of First Publication	Registration Date	Most Recent Hit UTC
Good Morning I Love You	PA0001941287	04/22/2015	04/27/2015	04/29/2015
Exposed And Aroused	PA0001921293	11/01/2014	11/06/2014	03/30/2015
Sex and Submission	PA0001882649	03/01/2014	03/06/2014	03/27/2015
The Studio Part #2	PA0001931476	01/28/2015	02/17/2015	01/29/2015
Spanish Heat	PA0001917709	10/13/2014	10/19/2014	01/09/2015
Enjoy the Ride	PA0001926086	12/18/2014	12/29/2014	12/25/2014
Cum In Get Wet	PA0001923948	11/26/2014	12/08/2014	12/05/2014
Serving Seduction	PA0001916704	10/08/2014	10/09/2014	11/16/2014
Deep Down In Me	PA0001922955	11/13/2014	11/18/2014	11/14/2014
One Show For Each	PA0001921295	10/26/2014	11/06/2014	11/07/2014
Fun For Three	PA0001914731	09/19/2014	09/22/2014	10/06/2014
Nice And Slow	PA0001916038	09/28/2014	10/06/2014	10/06/2014
For Your Eyes Only	PA0001909485	08/11/2014	08/19/2014	08/21/2014
Thunderstorm Love	PA0001909507	08/13/2014	08/26/2014	08/21/2014
Tie Her Up For Me	PA0001906551	07/03/2014	07/14/2014	07/16/2014
Give Me More Part 2	PA0001905479	06/29/2014	07/02/2014	07/01/2014
Meet My Lover From Austria	PA0001898094	05/17/2014	06/06/2014	05/22/2014

Total Malibu Media, LLC Copyrights Infringed: 17

EXHIBIT B

ENY50